

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
COUNTY OF ARLINGTON, VIRGINIA	)	File Nos. 0002108062, 0002832293
	)	
For Modification of Travelers' Information	)	
Stations WQBY206 and WQCR563, Arlington,	)	
Virginia, and Request for Waiver of Section	)	
90.242 of the Commission's Rules	)	

**ORDER**

**Adopted: March 1, 2007****Released: March 1, 2007**

By the Chief, Policy Division, Public Safety and Homeland Security Bureau:

**I. INTRODUCTION**

1. We have before us a request for a waiver of Section 90.242(b)(4)(iv) of the Commission's rules<sup>1</sup> (Waiver Request) filed by the County of Arlington, Virginia, (Arlington).<sup>2</sup> Arlington seeks to modify its license for Call Sign WQCR563, a Travelers' Information Station ("TIS"), to communicate with the public over an expanded area during emergencies. For the reasons stated herein, we grant the waiver request. In connection with this grant, as explained herein, we also direct Arlington to withdraw its pending petition for reconsideration of a previous decision denying its request to modify TIS Call Sign WQBY206, and submit for cancellation its license for TIS Call Sign WQBY206, within ten days of the release of this Order.<sup>3</sup>

**II. BACKGROUND**

2. Arlington initially was licensed under Call Sign WQBY206 at a facility located in Arlington, Virginia ("Fire Station #2").<sup>4</sup> Arlington previously sought a waiver of Sections 90.242(b)(4)(iii) and (iv) of the Commission's rules<sup>5</sup> in order to increase the station's authorized power from ten watts to one hundred watts within a coverage area beyond the prescribed two millivolts per meter (mV/m) distance.<sup>6</sup> That request was placed on *Public Notice* and was unanimously supported by

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<sup>1</sup> 47 C.F.R. § 90.242(b)(4)(iv).

<sup>2</sup> See FCC File No. 0002832293 (filed Nov. 29, 2006) and accompanying waiver request of Arlington County, Virginia.

<sup>3</sup> See Arlington County, Virginia, Petition for Reconsideration (filed Oct. 14, 2005).

<sup>4</sup> Waiver Request at 1. "Fire Station #2" also is licensed under Call Sign WQCR563, as part of an existing five-site system, which is the subject of the instant Order.

<sup>5</sup> 47 C.F.R. §§ 90.242(b)(4)(iii), (iv).

<sup>6</sup> See File No. 0002108062, Waiver Request (filed May 31, 2005). Section 90.242(b)(4)(iii) limits TIS to ten watts output power. 47 C.F.R. § 90.242(b)(4)(iii). Section 90.242(b)(4)(iv) provides that the field strength of the emission on the operating frequency shall not exceed 2 mV/m when measured with a standard field strength meter at a distance of 1.50 km. 47 C.F.R. § 90.242(b)(4)(iv).

commenters.<sup>7</sup> The former Public Safety and Critical Infrastructure Division (PSCID) of the Wireless Telecommunications Bureau, however, dismissed and denied the modification application and accompanying waiver request.<sup>8</sup> Although Arlington's petition for reconsideration of the *Order* remains pending, Arlington has indicated that it is "prepared to withdraw the petition [for reconsideration] in favor of the requested modification and waiver, if and as appropriate."<sup>9</sup>

3. Arlington now submits that "testing of antenna systems of the type the County would like to employ has demonstrated much wider coverage at ten watts than first anticipated. The chosen antenna configuration will potentially extend the range of the 2 mV/m contour to a distance of approximately 3.27 kilometers (km) from the transmitter site."<sup>10</sup> Accordingly, Arlington now seeks a waiver of Section 90.242(b)(4)(iv) only to extend the coverage contour of Fire Station #2, currently licensed under Call Sign WQCR563, beyond the prescribed boundary of 1.5 km (0.93 miles) from the transmitting antenna.<sup>11</sup>

4. Arlington states that it is one of the most densely populated jurisdictions in the country, with a weekday population estimated at 280,000.<sup>12</sup> Arlington believes that a minimum signal of 2 m/Vm would be required to provide adequate service to listeners and to override ambient radio frequency noise on the AM broadcast band in an urban environment.<sup>13</sup> Arlington argues that a single site system will be far more reliable and efficient than synchronizing a multi-site system.<sup>14</sup> Further, it believes that a waiver would allow Arlington to install one transmitter at a preferred site and provide a highly reliable system with minimal transmission gaps between its five TIS sites licensed under WQCR563 without causing interference to other commercial AM or TIS stations.<sup>15</sup> Noting that its central transmitter, Fire Station #2, is in the immediate vicinity of roadways Interstate 66 and Wilson Boulevard, a business corridor connector,<sup>16</sup> Arlington contends that grant of the waiver request would permit Arlington to extend its signal coverage to the Pentagon, Reagan National Airport, and the five bridges over the Potomac River that connect Washington, D.C. and Virginia.<sup>17</sup>

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<sup>7</sup> See Wireless Telecommunications Bureau Seeks Comment on Request for Waiver by the County of Arlington, Virginia, to Operate an AM Travelers' Information Station with a Power Level of 100 Watts, *Public Notice*, 20 FCC Rcd 12382 (WTB PSCID 2005). See Letter from Jacqueline Snelling and Jim Pebley, Arlington Citizen Corps, to Federal Communications Commission (dated Aug. 8, 2005); Letter from Mark A. Buchholz, Claremont Citizens Association, to Federal Communications Commission (dated Aug. 8, 2005); Letter from Patrick A. Smaldore Jr., Arlington County Civic Federation, to Federal Communications Commission (dated Aug. 5, 2005); Letter from Henry J. "Jack" Reed, Arlington Amateur Radio Club, to Federal Communications Commission (dated Aug. 5, 2005).

<sup>8</sup> See County of Arlington, Virginia, *Order*, 20 FCC Rcd 14785 (WTB PSCID 2005) (*Order*). Pursuant to Commission reorganization effective September 25, 2006, the relevant duties of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunication Bureau were assumed by the Policy Division of the Public Safety and Homeland Security Bureau. See Establishment of the Public Safety and Homeland Security Bureau, *Order*, 21 FCC Rcd 10867 (2006).

<sup>9</sup> Waiver Request at 2.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 3.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 4.

<sup>17</sup> *Id.*

### III. DISCUSSION

5. To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest,<sup>18</sup> or the applicant has no reasonable alternative.<sup>19</sup> An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.<sup>20</sup> Based on the information before us, we are persuaded that Arlington has demonstrated that a waiver of Section 90.242(b)(4)(iv) is warranted.

6. When the Commission adopted the TIS rules, it stated that TIS "is intended to serve a 3 km zone with generally repetitive information pertinent to travelers."<sup>21</sup> In limiting the TIS coverage zone, the Commission primarily was motivated to minimize the potential for TIS to cause interference to broadcast stations.<sup>22</sup> The Commission therefore adopted rules to limit the measured field strength at 1.5 kilometers from the transmitting site, limit the maximum antenna height, and limit the transmitter output power to ten watts.<sup>23</sup> The Commission stated that "considering the likelihood of interference to broadcast stations, these steps should prevent interference situations from developing without unduly burdening TIS applicants."<sup>24</sup> Arlington conducted an engineering analysis to demonstrate that its ten-watt TIS facility operating on frequency 1700 kHz would afford all existing AM broadcast stations the required interference protection.<sup>25</sup> After reviewing Arlington's engineering analysis, we believe that grant of the waiver request is warranted because Arlington has demonstrated that its proposal would adequately protect broadcast stations from potential harmful interference, consistent with the underlying purpose of Section 90.242(b)(4)(iv).

7. Each application for TIS must be accompanied by a statement certifying that the proposed station satisfies the minimum separation distances specified in Section 90.242(a)(2)(i).<sup>26</sup> Specifically, the proposed station must be located at least 15 km (9.3 miles) outside the measured 0.5 mV/m service contour of any broadcast station operating on the first adjacent channel, or at least 130 km (80.6 miles) for broadcast stations operating on a co-channel basis.<sup>27</sup> Arlington states that Fire Station #2 would be located 82.18 km from first adjacent channel station WPTX, Lexington Park, Maryland, operating on frequency 1690 kHz.<sup>28</sup> The separation between the respective stations' 0.5 mV/m service

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<sup>18</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>19</sup> 47 C.F.R. § 1.925(b)(3)(ii).

<sup>20</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972) (*citing Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broadcasting Corporation, Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 ¶ 6 (2003).

<sup>21</sup> Amendment of Parts 2 and 89 of the Rules to Provide for the Use of Frequencies 530, 1606, and 1612 kHz by Stations in the Local Government Radio Services for the Transmission of Certain Kinds of Information to the Traveling Public, Docket No. 20509, *Report and Order*, 67 F.C.C.2d 917, 925 ¶ 27 (1977) (*TIS Report and Order*).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 926 ¶ 31.

<sup>24</sup> *Id.* at 924 ¶ 25.

<sup>25</sup> Waiver Request at 9-15.

<sup>26</sup> See 47 C.F.R. § 90.242(a)(2)(i).

<sup>27</sup> *Id.*

<sup>28</sup> Waiver Request at 11.

contours is approximately 27 km, thus meeting the minimum separation requirement. Arlington also states that its operations would not interfere with the 0.5 mV/m service contour of the nearest co-channel station, Call Sign WEUV, Huntsville, Alabama, which is located 963 km away.<sup>29</sup> Based on the facts before us, we conclude that Arlington has satisfied the requisite separation distance requirements of Section 90.242(a)(2)(i).

8. Section 90.242(a)(2)(ii) requires a TIS applicant to certify that it has considered possible cross-modulation and inter-modulation interference effects on AM broadcast stations in the vicinity that are operating on the second or third adjacent channel.<sup>30</sup> Arlington notes that the closest second adjacent channel station, Call Sign WTTM, Lindewold, New Jersey, operating on frequency 1680 kHz, is located 210.94 km away, and that the closest third adjacent channel station, Call Sign WMWR, Dry Branch, Georgia, operating on frequency 1670 kHz, is located 852.59 km away.<sup>31</sup> Based on the information provided, we conclude that grant of the waiver will not result in cross-modulation or intermodulation interference to second or third adjacent AM broadcast stations.<sup>32</sup>

9. Based on the record before us, we also find that a grant of Arlington's request for a waiver would serve the public interest by enabling Arlington to expand its coverage area using TIS as part of its comprehensive emergency communications preparedness plan. In the immediate aftermath of the September 11, 2001 terrorist attacks, Arlington states that it was unable to communicate information to large numbers of people, "particularly those in the midst of the monumental traffic gridlock that occurred throughout the Washington metropolitan area."<sup>33</sup> Arlington notes that the surrounding metropolitan area of Arlington County contains many potential "high profile" terrorist targets and that during a disaster or emergency, its bridges are integral to an evacuation of the nation's Capitol.<sup>34</sup>

10. In granting Arlington's waiver request, we reiterate that TIS stations are licensed on a secondary, non-interference basis.<sup>35</sup> Thus, Arlington must not cause interference to any broadcast station, and it also must accept interference from any broadcast station.<sup>36</sup> We also emphasize that grant of the

<sup>29</sup> *Id.* at 11. The Commission's licensing records indicate that the station at Huntsville, Alabama, operating on frequency 1700 kHz, is assigned Call Sign WEUP, not WEUV, as referenced by Arlington.

<sup>30</sup> See 47 C.F.R. § 90.242(a)(2)(ii).

<sup>31</sup> Waiver Request at 11. The Commission's licensing records indicate that the station at Dry Branch, Georgia operating on frequency 1670 kHz changed its call sign to WVVM.

<sup>32</sup> We also note Arlington satisfies the requirement of Section 90.242(a)(2)(iii) of the Commission's rules by providing a map showing the geographical location of the transmitter site and an estimate of the signal strength at the contour of the desired coverage area. See Waiver Request at 15; 47 C.F.R. §90.242(a)(2)(iii). Arlington also satisfies the requirements of Section 90.242(a)(2)(iv) by providing technical details about the proposed transmitter site both in the waiver request and on the application. See Waiver Request at 10-11; FCC File No. 0002832293; 47 C.F.R. §90.242(a)(2)(iv). Additionally, we believe that grant of the waiver request would not result in interference to co-channel TIS stations. Section 90.242(b)(5) of the Commission's rules sets forth minimum separation distances between co-channel TIS stations operating under different licenses, the largest of which is 15.0 km in situations where both stations are using conventional antennas. 47 C.F.R. §90.242(b)(5). Arlington notes that its proposed site would be located 27.7 km from co-channel TIS Station WQFB923, Howard County, Maryland Office of Emergency Management, thus meeting the distance separation requirement. Waiver Request at 10.

<sup>33</sup> Waiver Request at 16, Exhibit C.

<sup>34</sup> *Id.* at 17, Exhibit C. Arlington notes that the Virginia side of all five bridges directly connecting from the District of Columbia are located in Arlington. *Id.*

<sup>35</sup> 47 C.F.R. § 90.242(a)(3).

<sup>36</sup> See *id.*; 47 C.F.R. § 90.7. Further, the Commission's rules provide that a TIS authorization may be suspended, modified or withdrawn by the Commission, without prior notice of right to a hearing "if necessary to resolve interference conflicts." *TIS Report and Order*, 67 F.C.C.2d at 924 ¶ 25; 47 C.F.R. § 90.242(a)(4).

waiver request does not obviate Arlington's obligation to comply with Section 90.242(a)(7) of the Commission's rules.<sup>37</sup> Specifically, Arlington may use its TIS to broadcast only noncommercial voice information pertaining to traffic and road conditions, traffic hazard and travel advisories, directions, availability of lodging, rest stops and service stations, and descriptions of local points of interest.<sup>38</sup> In this connection, we note that the Commission specifically "precludes an applicant from setting up a 'network,' or 'ribbon' of transmitting stations along a highway for the purpose of continuously attracting a motorist with what could be superfluous information."<sup>39</sup>

11. Consistent with the *TIS Report and Order* and the rules adopted thereunder, we hereby grant Arlington's waiver request on the condition that Arlington operate its modified system at the ten-watt output power limit specified in Section 90.242(b)(4)(iii) and take all necessary precautions to prevent any undue encroachment of its TIS signal into Washington, D.C.<sup>40</sup> In light of our decision to grant Arlington's waiver request, we also direct Arlington to withdraw its pending petition for reconsideration within ten days of the release date of this Order. Additionally, because Station Call Sign WQBY206 is licensed on the same frequency (1700 kHz) and at the same location as Fire Station #2 (Call Sign WQCR563), we also direct Arlington to submit Station Call Sign WQBY206 for cancellation within ten days of the release date of this Order.

#### IV. CONCLUSION

12. In consideration of the facts before us and subject to the conditions herein, we grant the waiver request because Arlington has demonstrated that a waiver of Section 90.242(b)(4)(iv) is warranted under Section 1.925 of the Commission's rules. We also find that grant of the instant waiver request serves the public interest because it ensures that broadcast stations are protected, while providing Arlington the ability to provide pertinent information to the traveling public.

#### V. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, that the Request for Waiver of Arlington County, Virginia, filed by the County of Arlington, Virginia, on November 26, 2006 IS GRANTED.

14. IT IS FURTHER ORDERED, that application FCC File No. 0002832293, filed November 29, 2006 by the County of Arlington, Virginia, SHALL BE PROCESSED in accordance with this Order and the Commission's rules.

15. IT IS FURTHER ORDERED, that the County of Arlington, Virginia shall withdraw its Petition for Reconsideration, filed on October 14, 2005, within ten days of the release date of this Order.

16. IT IS FURTHER ORDERED, that Arlington shall submit its license for Station Call Sign WQBY206 for cancellation within ten days of the release date of this Order.

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<sup>37</sup> 47 C.F.R. § 90.242(a)(7).

<sup>38</sup> *Id.*

<sup>39</sup> *TIS Report and Order*, 67 F.C.C.2d at 923-24 ¶ 23.

<sup>40</sup> *Id.* at 928 ¶ 37 (stating that "to more effectively share the limited radio frequency spectrum allocated for this service with all jurisdictions having such requirements, we strongly urge that the coverage area to be served by each TIS be confined to the licensee's area of jurisdiction.").

17. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

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